

Appl. No. 10/542,506
Amdt. dated June 17, 2010

REMARKS/ARGUMENTS

This Amendment is in response to the final rejection dated February 2, 2010, the Advisory Action dated May 13, 2010, and the Advisory Action dated June 11, 2010. Applicant has (1) amended the specification to remove the hyperlink first objected to by the Examiner in the Final rejection, (2) submitted information first requested by the Examiner in the Final rejection, and (3) amended the claims to remove the basis for certain of the rejections under 35 U.S.C. §112 first made by the Examiner in the Final rejection. It is believed that these actions are in full compliance with 37 CFR 41.33 and 37CFR 1.116, as interpreted in the MPEP at 1206. Therefore, Applicant respectfully requests entry of the amendment.

Amendment of the Specification

Applicant has amended ¶0077 to remove the hyperlink and to correct a spelling.

Rule 105 Request

Submitted herewith as Exhibit A are copies of product information sheets for SimplyThick®, the packaged thickener concentrate sold by Applicant's assignee. Also submitted with this Amendment is a copy of instructions for using the SimplyThick® thickener concentrate product. These documents were distributed at

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or around the time of the filing of the instant application. Applicant provided the original information in response to his ongoing duty of candor to the U.S. Patent & Trademark Office. Applicant requests confirmation from the Examiner that these documents satisfy the request under Rule 105.

Certain Claim Rejections Under 35 U.S.C. §112, ¶1 and ¶2

The Examiner rejected amended claims 39-45 under 35 U.S.C. §112 ¶1 for failing to comply with the written description requirement on account of the use of the phrase “aqueous liquid thickener.” The Examiner also rejected claims 39-45 as being ambiguous on account of the language “aqueous liquid thickener.”

To place the claims in better form for appeal, Applicant has amended claim 39 to call for a “thickener concentrate”, which is the language used throughout the instant specification (e.g., ¶¶ 21, 22, 50, 52, 60, 61, 62, 63, 65, 66, 67, 68, and 78 with respect to a dispenser or metering pump).

This language was also in claims 40 (“the dispensing machine includes a container of thickener concentrate”), claim 41 (“the dispensing machine includes a container of thickener concentrate”), claim 42 (“wherein the thickener used in the thickener concentrate”), and claims 44 and 45 (“...% of the thickener concentrate”) **as originally filed.**

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Therefore, it is clear that this is not one of the “claim limitations that were not examined by the Examiner” because applicant received substantive examinations of these claims containing the identical limitation.

The present proposed amendment does not attempt to introduce any other new limitations into the claims. The other amendments go entirely to matters of form. In claim 42, “the thickener” has been changed to “the thickener concentrate” to provide proper antecedent basis for the terminology. In that claim “and or” has been changed to “and” to place the claim in proper Markush form. Claims 44 and 45 have been amended to depend on claim 43 rather than 42, because both refer to the limitation of claim 43 (xanthan gum).

It is believed that the foregoing amendments overcome the rejections of claim 39 under 35 U.S.C. §112 ¶1 and 35 U.S.C. §112 ¶2, do not raise any new issues, and present the rejected claims in better form for consideration on appeal. Applicant requests withdrawal of this portion of the rejection and entry of the amendments to the claims for purposes of appeal.

Conclusion

It is respectfully requested that this amendment be entered to comply with the Examiner’s formal requirements and to simplify the issues for appeal. Should the Examiner have questions or suggestions, she is urged to call Applicant’s undersigned

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attorney in order to simplify the issues on appeal for both Applicant and the Examiner.

Respectfully submitted,

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